SUPREME COURT, U.S.
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No. 88-1378

In The

Supreme Court of the United States

October Term, 1988

FRANK McNEIL ET AL.,

Petitioners,

v.

SPRINGFIELD PARK DISTRICT,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF IN OPPOSITION

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STATEMENT OF THE CASE

Respondent Springfield Park District was founded as The Pleasure Driveway and Park District of Springfield in 1900. Pursuant to the original statutory scheme, elections have been consistently at-large. *See,* Ill. Rev. Stat. Chapter 105, Para. 108 (1895). The elections have also been consistently non-partisan. *See,* Ill. Rev. Stat. Chapter 105, Para. 2-17 and 2-11.

Springfield Park District has a governing board consisting of a president, elected at large for a four year term, and six trustees, also elected at large for four-year terms. *See,* Ill. Rev. Stat. Chapter 105, Para. 2-15. Three of the six trustees run at large every other year as provided by the original statutory scheme and in accord with the consolidation of the various park district statutes in the Park District Code. *See,* Ill. Rev. Stat. Chapter 105, Para. 1-2(a). No provision is made in the Park District Code for any election of officers other than at large, and none of the various forms of governing bodies for park districts have a membership larger than seven. *See,* Ill. Rev. Stat. Chapter 105, Para. 1 *et seq.*

The 1980 census of the Springfield Park District showed a total population of 119,334 persons. Of those persons, 11,198 were identified as black. According to the census, 76.6 percent of the white population is of voting age, while 59.0 percent of the black population is of voting age. *See,* Affidavit of Susan Poludniak appearing in Appendix of Appellee in the Court of Appeals at Page 14.

Petitioners filed this matter as a class action in the United States District Court for the Central District of

Illinois on January 20, 1987. Plaintiffs alleged that the at-large election system of the Springfield Park District violated Section 2 of the Voting Rights Act of 1965, as amended in 1982, 42 U.S.C., Section 1973.

Petitioners proposed dividing the Springfield Park District into seven single-member districts. According to the 1980 census figures, the petitioner's putative district containing the largest concentration of minority population would be 50.4 percent black, but in that district, the minority would constitute only 43.7 percent of the voting-age population in the district. *McNeil v. Springfield Park* District, 851 F.2d 937, 939, n. 2 (7th Cir., 1988) Petitioners' Appendix (hereinafter App.) p. 2a n. 2.

Summary judgment was granted in favor of the Respondent and Springfield School District No. 186[1] on August 13, 1987. The trial court held that Petitioners failed to bear the burden of proving that the minority group was sufficiently large and geographically compact to constitute a majority in a single-member district. *McNeil v. Springfield Park District*, 666 F. Supp. 1208 (C.D. Ill. 1987), App. p. 22a.

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[1]Springfield School District No. 186 was named as a defendant in a separate suit in the trial court, Cause No. 87-3017. The School District case and that against Respondent were consolidated by the trial court for opinion and were consolidated for hearing and opinion on appeal. Following the decision on appeal, the manner of election of the Springfield School District was changed by referendum from at large to by district. Based on that change, Petitioners filed a motion to withdraw the mandate as to the School District in the Court of Appeals asserting the matter was moot. The motion to withdraw the mandate was denied on February 13, 1989.

The Court of Appeals for the Seventh Circuit affirmed. *McNeil v. Springfield Park District,* 851 F.2d 937 (7th Cir., 1988) App. p. 1a. A Petition For Rehearing and A Suggestion For Rehearing en banc was denied by the Seventh Circuit on September 21, 1988. App. p. 36a.

REASONS FOR DENYING THE WRIT

Since *Thornburg v. Gingles* 478 U.S. 30 (1986), the court below as well as five other circuits and numerous district courts have construed *Gingles.* The interpretation of *Gingles* has been consistent and uniform. There is no need to revisit this Court's decision in *Gingles.*

The decision below stands for two simple propositions: First, that interpreting the first of three "preconditions" for actions brought under Section 2 of the Voting Rights Act of 1965 as amended, 42 U.S.C. Section 1973, as set forth in *Gingles,* the word "majority" means majority of voting-age population; and second, that where the *Gingles* preconditions cannot be met, summary judgment, under Federal Rule of Civil Procedure 56 is appropriate.

Petitioners conceal a myriad of issues in the single question presented to this court. While some of those issues have been squarely presented below, others have received almost no attention from the Petitioners in their evidence and legal memoranda and consequently, from both the trial and appellate court below.

Respondent, Springfield Park District, will argue (1) that the decisions below are entirely consistent with this

court's decision in *Thornburg v. Gingles*, (2) that the decision below is consistent with voting rights cases both pre- and post-*Gingles* and that there exists in the reported cases, no conflict in the interpretation of *Gingles*, (3) that summary judgment is appropriate when the *Gingles* thresholds cannot be met, and (4) that the decision below affects only marginal cases where no effective remedy is available.

I. "MAJORITY" MEANS VOTING-AGE MAJORITY IN THE CONTEXT OF THE FIRST OF THE GINGLES THREE PRECONDITIONS.

In January of 1987, a class action was brought against the Respondent, Springfield Park District, alleging essentially that the Park District's statutory election scheme which provided for the election of a president and six trustees in at-large elections, violated the Plaintiffs' rights under Section 2 of the Voting Rights Act of 1965, 42 U.S.C. Section 1973. The suit alleged that the at-large structure diluted the voting power of the minority citizens of the Springfield Park District in that at-large elections gave minority members less opportunity than other members of the electorate to elect representatives of their choice.

Section 2 of the Voting Rights Act was amended in 1982[2] as a response to this court's decision in *City of*

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[2]Section 2 of the Voting Rights Act of 1965, 42 U.S.C. Section 1973 as amended in 1982 reads as follows:

(Continued on following page)

Mobile v. Bolden, 446 U.S. 55 (1980). *Bolden* broke with prior precedent by requiring Plaintiffs to prove discriminatory purpose as a necessary element of their claim.

This court first spoke to the amended Section 2 in 1986 in the matter of *Thornburg v. Gingles*, 478 U.S. 30 (1986). Justice Brennan, writing for the court, examined the legislative history of Section 2 and found that at-large elections are not *per se* violative of Section 2. *Id.* at 46-47.[3]

The court in *Gingles* established three necessary preconditions which must be shown before a multi-member district can be said to impair the ability of minority voters

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(Continued from previous page)

(a) No voting qualification or prerequisite to voting, or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgment of the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title, as provided in subsection (b) of this section.

(b) A violation of subsection (a) is established if, based on the totality of the circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) of this section in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered: *Provided*, That nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.

[3]Likewise, at-large methods of electing legislative bodies are not unconstitutional per se. *Rogers v. Lodge*, 458 U.S. 613 (1982).

to elect representatives of their choice. *Id.* at 50-51. This matter concerns only the first of the necessary preconditions.

In addressing to the first of the preconditions, the court said:

> First, the minority group must be able to demonstrate that it is sufficiently large and geographically compact to constitute a majority in a single-member district [footnote omitted]. If it is not, as would be the case in the substantially integrated district, the *Multimember form* of the district cannot be responsible for the minority voters' inability to elect its candidates. *Id.* at 50.

The court explained its rationale in Footnote 17:

> The reason that a minority group making such a challenge must show, as a threshold matter, that it is sufficiently large and geographically compact to constitute a majority in a single-member district is this: Unless minority voters possess the *potential* to elect representatives in the absence of the challenged structure or practice, they cannot claim to have been injured by that structure or practice. The single-member district is generally the appropriate standard against which to measure minority group potential to elect because it is the smallest political unit from which representatives are elected. Thus, if the minority group is spread evenly throughout a multi-member district, or if, although geographically compact, the minority group is so small in relation to the surrounding white population that it could not constitute a majority in a single-member district, these minority voters cannot maintain that they would have been able to elect respresentatives of their choice in the absence of the multi-member electoral structure. As two-commentators have explained:

> "To demonstrate [that minority voters are injured by at-large elections], the minority voters must be sufficiently concentrated and politically cohesive that a putative districting plan would result in districts in which the members of the racial minority would constitute a majority of the voters whose clear electoral choices are in fact defeated by at-large voting. If minority voters' residences are substantially integrated throughout the jurisdiction, the at-large district cannot be blamed for the defeat of minority-supported candidates . . . [This standard] thus would only protect racial minority votes for diminution proximately caused by the districting plan; *it would not assure racial minorities proportional representation.* [Citations omitted.] *Id.* at 50, n. 17.

The language of the footnote makes clear that Justice Brennan was discussing only those members of the minority group eligible to vote[4] and that the preconditions are tests of causation. Only a majority of those eligible to vote can establish the potential to elect. In absence of the potential to elect, as shown through the concentration of minority voters, the multi-member form of government cannot be said to be the proximate cause of any electoral failure.

Throughout Footnote 17, the *Gingles* court consistently refers to "minority voters." Such a distinction is clearly warranted under prior voting rights interpretations

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[4]As the Court below pointed out, " . . . those ineligible to vote have not experienced a dilution of their vote. They are not parties to a Section 2 claim." 851 F.2d at 945, App. p.15a.

and is consistent with the decisions both of the Supreme Court[5] and prior lower courts[6].

As the test is one of causation, it seems only logical that "majority" as used by Justice Brennan, is equated with voting age majority. The barest of population majorities as shown by Petitioners here is insufficient to show the potential to elect.

II. THE DECISION BELOW IS CONSISTENT WITH BOTH PRE- AND POST- GINGLES DECISIONS.

Prior to this court's decision in *Gingles,* a number of other courts considered the requirement for a voting-age majority in various contexts. The trial court in *Gingles* had stated the requirement for a voting-age majority simply:

> No aggregation of less than 50 percent of an area's voting-age population can possibly constitute an effective voting majority. *Gingles v. Edminstein,* 590 F. Supp. 345, 381 (E.D.N.C., 1984) *aff'd* in part, reversed in part *sub. nom. Thornburg v. Gingles, supra.*

Similarly, in *Latino Political Action Committee v. City of Boston,* 609 F .Supp. 739 (DC Mass, 1985) *aff'd* 784 F.2d 409 (1st Cir., 1986) the court stated:

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[5]"Voting age population data are probative because they indicate the electoral potential of the minority community. *City of Rome v. United States,* 446 U.S. 156, 186 n. 22 (1980).

[6]*See, Latino Political Action Committee v. City of Boston,* 609 F. Supp. 739 (DC Mass., 1985) *aff'd,* 784 F.2d 409 (1st Cir. 1986) and *Ketchum v. Byrne,* 740 F.2d 1398, 1412-13 (7th Cir. 1984) *cert. den.* 471 U.S. 1135 (1985).

> Because no district containing a . . . voting majority can be created . . . the district plan does not impermissibly dilute . . . voting strength. *Latino* at 747.

Judge Cudahy, who wrote the Appellate decision below, had previously addressed the issue in *Ketchum v. Byrne,* 740 F.2d. 1398, 1412-13 (7th Cir., 1984) *cert. denied,* 471 U.S. 1135 (1985). The *Ketchum* Court held that the minority population in a redistricting case, should be 65 percent of the total population in a district in order for the minority group to have an opportunity to elect candidates of its choice. Judge Cudahy explained his rational as follows:

> A guideline of 65 percent of total population has been adopted and maintained for years by the Department of Justice and by reapportionment experts and has been specifically approved by the Supreme Court in circumstances comparable to those before us as *representing the proportion of minority population reasonably required to ensure minorities a fair opportunity to elect a candidate of their choice.* This figure is derived by augmenting a simple majority with an additional 5 percent for young population, 5 percent for low voter registration and 5 percent for low voter turnout, for a total increment of 15 percent. This leads to a total target figure of 65 percent of total population. Obviously, if voting age population statistics are used, 5 percent would drop out of the formula leaving something in the vicinity of 60 percent of voting age population as the target population. (Emphasis added) *Id.* at 1415.

Subsequent to this court's decision in *Gingles,* six circuits, including the case now before the court, have interpreted *Gingles.* Each of these circuits has found the *Gingles* thresholds to be a prerequisite to the successful

prosecution of a claim under Section 2. *See, McGhee v. Granville County, North Carolina,* (in dicta) 860 F.2d 110, 117, 119 (4th Cir., 1988); *Collins v. City of Norfolk,* 816 F.2d 932, 935 (4th Cir., 1987); *Campos v. City of Baytown,* 840 F.2d 1240, 1244 (5th Cir., 1988) cert. pending #88-606, 57 L.W. 3296; *Buckanaga v. Sisseton Independent School District No. 54-5,* 804 F.2d 469, 473 (8th Cir., 1986); *Gomez v. City of Watsonville,* 863 F.2d 1407, 1413-14 (9th Cir., 1988); *Carrollton Branch of NAACP v. Stallings,* 829 F.2d 154f (11th Cir., 1987) *cert. denied sub. nom.; Duncan v. City of Carollton,* — U.S. —, 108 S.Ct. 1111, 99 L.Ed. 272 (1988); and *Solomon v. Liberty County,* Nos. 87-33406 and 87-3406a, Slip Opinion Pages 6 & 7 appearing at 1988 U.S. App. Lexis 16,777 (11th Cir., 1988).

Likewise, the District Court opinions post-*Gingles* have consistently held that the *Gingles* thresholds are a prerequisite to a successful prosecution under Section 2. *See, Romero v. City of Pomona,* 665 F. Supp. 853 (C.D. Cal., 1987); *Martin v. Allain,* 658 F. Supp. 1183, 1204 (S.D. Miss., 1987); *McDaniels v. Mehfoud,* No. 88-0020-R, Slip Opinion at 9, E.D. Va., 1988), available 1988 U.S. Dist. Lexis 15,114; *Armour v. State of Ohio,* No. C88-1104Y, Slip Opinion at 5-7 (N.D. Ohio, 1988); *Brewer v. Ham,* No. W-87-Ca-015, Slip Opinion at 6-7 (W.D. Texas, 1988); and *Clark v. The Holbrook Unified School District No. 3 of Navajo County,* Civ. No. 88-0148-DCT-RGS (D.C. AZ, 1989); available 1989 U.S. Dist. Lexis 442; and *Williams v. State Board of Elections,* 696 F. Supp. 1563, 1566 (N.D. Ill., 1988).

The courts are uniform in their application of the *Gingles* test with regard to the question of the meaning of

majority. "Although the language of *Gingles* seems to refer simply to gross minority population, references in the opinion to 'minority voters' show that the court intended the sufficiency of the single-district majority to be measured by the size of the voting age population." *Solomon, supra,* at 10.

Solomon rejected the Defendant's contention that majority had to be defined by the percentage of registered voters in the population. *Id.* at 19-20. Likewise, the trial court in *McDaniel v. Mehfoud, supra,* rejected a defense contention that the *Gingles* test must be met by a showing of a majority of those who turn out to vote, rather than a voting-age population measurement, *McDaniels supra* at 11-12. Similarly, the District Court in *Brewer v. Ham, supra* at 6, found following trial that the failure of plaintiffs to provide voting-age population data as opposed to total population figures was fatal to their claim citing *Wyche v. Madison Parish Police Jury,* 635 F.2d 1151, 1162 (5th Cir., 1981) for the proposition that total population figures rather than voting-age population figures are of no particular relevance in a vote dilution case. *See also, Romero v. City of Pomona, supra* at 864.

A review of the cases both prior to and following *Gingles* establishes that the *Gingles* thresholds are uniformly interpreted as prerequisites to maintenance of a Section 2 cause of action and that majority is determined by measuring voting-age population. No contrary authority appears in the authorities cited by Petitioners.

III. SUMMARY JUDGMENT IS APPROPRIATE WHEN THE GINGLES PRECONDITIONS CANNOT BE MET.

As with any matter, summary judgment is appropriate under Federal Rule of Civil Procedure 56(c) when:

> . . . the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is not genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A party opposing a properly supported motion for summary judgment may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine issue for trial. *First National Bank of Arizona v. City Service Company*, 391 U.S. 253 (1968).

This court's decision in *Gingles* made summary judgment entirely appropriate in voting rights cases. *Gingles* fashions a clear regime for a prima facie Section 2 case. Only upon satisfaction of the threshold criteria is a totality of the circumstances analysis necessary.[7]

Other circuits have also held that summary judgment is proper in Section 2 cases. *See, Carrollton Branch of NAACP v. Stallings, supra* at 1550; *Collins v. City of Nor-*

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[7]See, *McNeil v. Springfield Park District* at 942, App. at 9a, and *Clark v. The Holbrook Unified School District, supra,* Slip Opinion at 4.

folk, 816 F.2d 932-936 (4th Cir., 1987); and *Buckanaga v. Sisseton Independent School District No. 54-5, supra* at 472.

Petitioners, argued in both the District and Circuit Courts that summary judgment is inappropriate in any Section 2 case. They now admit in Footnote 7 of their Petition that summary judgment would be appropriate in some cases.

Throughout the litigation below, Petitioners asserted that their facts met the *Gingles* criteria. Only now do Petitioners present this matter as one addressing a question left open by the *Gingles* court. Petitioners' argument is now tied specifically to the *Gingles* Footnote 12. That footnote reads as follows:

> We have no occasion to consider whether Section 2 permits, and if it does, what standards should pertain to, a claim brought by a minority group, which is not sufficiently large and geographically compact to constitute a majority in a single-member district, alleging that the use of a multi-member district impairs its ability to *influence* elections.
>
> We note also that we have no occasion to consider whether the standards we apply to Respondents' claim that multimember districts operate to dilute the vote of geographically cohesive minority groups that are large enough to constitute majorities in single-member districts and that are contained within the boundaries of the challenged multimember districts, are fully pertinent to other sorts of vote-dilution claims, such as a claim alleging that the splitting of a large and geographically cohesive minority between two or more multimember or single-member districts resulted in the dilution of the minority vote. 478 U.S. 30, 46-47, n. 12 (emphasis in original).

Essentially, Petitioners now ask this court to consider whether and under what circumstances a Section 2 challenge to at-large elections can be maintained by minority voters who would comprise less than a majority in a single-member district. Petitioners seek to have this court define, on this record, a new theory of liability based on an impairment of the Petitioners' ability to influence elections, as opposed the ability to elect.

Petitioners cite no authority standing for the proposition that the ability to influence is a relevant consideration on the question of liability. On the other hand, at least two cases have directly rejected the "influence" argument as a theory of liability. *See, Martin v. Allain, supra* at 1204 and *Armour v. State of Ohio, supra* at 4.

Like the single case cited in their Petition, *East Jefferson Coalition For Leadership and Development v. Parish of Jefferson*, 691 F. Supp. 991 (E.D. LA. 1988), all the cases dealing with "influence" in any way, are cases dealing with either the adequacy of a particular remedy after liability has been established, or redistricting cases. These are cases dealing with the packing or fracturing of minority groups by the drawing of district lines. *See*, e.g., *Major v. Treen*, 574 F.2d 325, 353 (E.D.La., 1983) (three judge panel) and *Seastrunk v. Burns*, 772 F.2d 143, 153-156 (5th Cir., 1985).

The court below did not believe that Footnote 12 left anything open:

> Given the Court's decision to draw a bright line for summary judgment purposes, it seems counterproductive to permit plaintiffs who cannot satisfy the threshold *Gingles* tests to make alternative claims

> that would obliterate the bright line. If allowed, the "ability to influence" claim would severely undermine whatever good purpose is served by the threshold factors. *McNeil v. Springfield Park Board, supra* at 947, App. at 20a, citing *Gingles, supra* at 90 n. 1 (O'Connor, J.) (concurring in judgment)

Judge Batchelder in *Armour v. Ohio, supra,* likewise does not believe that Footnote 12 leaves anything open. After discussing Footnote 12, Judge Batchelder held:

> Certainly the raising of a question of the full pertinence of the explicitly stated standards to a different kind of claim cannot be equated to an explicit "leaving open" of the entire question of what standards would be applicable to such a claim . . . *Armour, supra,* Slip Opinion at 4.

Petitioners in their Amended Complaint asserted that the form of the Springfield Park District impaired the ability of minority voters to "elect or to influence the election of representatives" of their choice. *See,* Appendix of Appellant in the Court of Appeals at 7. But the record was such that the trial court did not feel required to even to address the issue. *See, McNeil v. Park Board,* 666 F. Supp. 1208 (C.D. Ill., 1987) App. 22a *et seq.*

The Court of Appeals dealt with the "influence" issue in four paragraphs appearing following VI of its Opinion. App. pp. 19a-21a. Fairly read, the Appellate Court's opinion stands for the proposition that the mere allegation of the ability to influence is insufficient to avoid summary judgment.

The record in this case is inadequate for the court to address any influence issue. The efforts of the Petition-

ers throughout have been to bring the facts and circumstances of their case within the *Gingles* preconditions. The primary focus of the decisions of the District and Circuit Courts below was to interpret the first of the three *Gingles* preconditions.

Petitioners seek to blur the distinction between a claim based on the minority's ability to "influence" elections and a claim based on the minority's ability to "elect" candidates of its choice[8]. If, contrary to all the cited authority, an influence claim exists, it is a separate and distinct claim. Based on this record, there is no influence claim that is ripe for decision.

IV. THE DECISION BELOW AFFECTS ONLY MARGINAL CASES WHERE NO EFFECTIVE REMEDY IS AVAILABLE.

The court below found the *Gingles* test to be a reasonable exercise of the Court's authority over statutory interpretation. The *Gingles* approach focuses up front on whether there is an effective remedy for the claimed injury. It appropriately closes the courthouse to marginal cases. *See*, McNeil, at 942, App. p. 10a. An examination of the cases subsequent to *Gingles* bears that out.

Of the cases applying the *Gingles* test, plaintiffs have often prevailed. *See*, for example, *Gomez v. City of Watsonville, supra; Carrollton Branch of the NAACP v. Stallings, supra; Solomon v. Liberty County Florida, supra; McDaniel v. Mehfoud, supra.* Only when no effective remedy is available has *Gingles* been used to preclude voting

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[8]*See, Petition for Writ of Certiorari* at 5 a, n. 4.

rights cases. *See, e.g. Martin v. Allain,* 658 F. Supp. 1183 (S.D. Miss., 1987) and *Armour v. State of Ohio, supra,* at 8.

Even prior to *Gingles,* the problems of applying Section 2 concepts to aggregations of voters constituting less than a majority in any proposed district were of great concern to the courts. Maximizing minority voting strength in absence of a voting-age majority requires "courts to make the very finest of political judgments about possibilities and effects—judgments well beyond their capacities." *Latino Political Action Committee v. City of Boston* 784 F.2d to 409, 412 (1st Cir., 1986).[9] Short of an aggregation of minority voters constituting more than 50 percent no standards other than raw intuition are available for the courts to address both liability and remedy issues. *See, Gingles v. Edminsten* 590 F. Supp. 345, 381 (E.D. NC., 1984) *aff'd* in part, rev'd in part *sub. nom. Thornburg v. Gingles, supra.*

Movement away from the *Gingles* standard requires judicial speculation. As Judge Cudahy wrote, such movement "invites courts to build castles in the air, based on quite speculative foundations." *McNeil* at 13a. That speculation is pointed up directly by Petitioners' argument that where more than two candidates run for a single office, minority voters would possess the abilty to elect. *See McNeil* at 12a-14a. Such an analysis depends solely on the facts and circumstances presented in a *single* election.

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[9]See, also *Terrazas v. Clements,* 581 F. Supp. 1329, 1348 (N.D. Tex., 1984) (three judge court) and *Seamon v. Upham,* 536 F. Supp. 931, 949 (E.D. Tex.), (three judge court) *rev'd on other grounds,* 456 U.S. 37 (1982).

Such hypotheticals can provide no reasoned basis for the court to find that a particular structure violates the Voting Rights Act, since equally plausible hypotheticals can be postulated supporting the opposing view.

The Act provides no right to proportional representation. Applying Section 2 to aggregations of minority voters constituting less than 50 percent of the voting-age population in any district would not only require the courts to speculate, but also would violate the clear Congressional intent by requiring courts usually to require proportional representation. *See, Gingles* 478 U.S. at 94 (O'Connor, J.), (concurring in judgment).

The standard set by *Gingles* is objective. It is solid and substantial. It does not require speculation. As applied by the Seventh Circuit, it affects only marginal cases where no effective remedy is available. The cases after *Gingles* are consistent with the clear principles it sets forth. There is no reason to revisit *Gingles* on this record.

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CONCLUSION

The courts below have clearly and consistently applied the *Gingles* standards. There is no need for clarification. Certiorari should be denied.

Respectfully submitted,

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